



***Board of Zoning Appeals Public Hearing
September 20, 2016 — 7:00 P.M***

CASE NUMBER:	V-16-022
PROPERTY LOCATION:	Northeast corner of Old Alabama and Jones Bridge Road, Johns Creek, GA 30097 1st District, 1st Section, Land Lot 304
CURRENT ZONING:	O-I (Office-Institutional) Conditional and C-1 (Community Business) Conditional
PARCEL SIZE:	2.694 Acres
PROPERTY OWNERS:	Jay Eun
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS

REQUEST

The property, located at the northeast corner of Old Alabama Road and Jones Bridge Road, is currently a wooded, vacant lot, zoned O-I (Office-Institutional) conditional and C-1 (Community Business) conditional. The applicant is requesting a stream buffer variance to alter 2,347-square feet in the 75-foot no impervious surface setback, for the construction of a retaining wall and a portion of 12 parking spaces. Staff notes that the applicant is also requesting to rezone the subject property, from O-I (Office-Institutional) conditional and C-1 (Community Business) conditional to C-1 (Community Business) (case RZ-16-001) for the construction of a mixed-use commercial development not to exceed 11,000 square feet.

The proposed construction of a retaining wall and parking spaces is located in the center of the property, in the northern portion of the proposed development. There is evidence that the property would have been platted with a 25-foot or 35-foot tributary buffer, however, since the site is undeveloped, it was never platted with Fulton County.

The 12 parking spaces are part of a 55 parking space lot with 2,347-square feet of impervious surface area to be located in the 75-foot no impervious surface setback. The retaining wall which surrounds the northern and eastern sides of the proposed development, is located behind the parking spaces. The northern, or backside of the retaining wall, will be approximately 20-feet tall at its highest point, and will be constructed of modular block. The proposed construction will not encroach into the 50-foot or 25-foot state undisturbed buffer.

BACKGROUND

The western most parcel of the subject site, located at the northeast corner of Old Alabama and Jones Bridge Road, was rezoned to C-1 (Community Business) Conditional pursuant to Fulton County zoning case Z-86-281. The other parcel making up the subject development was rezoned to O-I (Office-Institutional) Conditional pursuant to Fulton County zoning case Z-89-153. Both parcels were part of a larger development that included

office, residential, and commercial uses. The applicant is requesting a rezoning, with seven concurrent variances, of the property as well that will be heard before Planning Commission on October 4, 2016, and Mayor and City Council on October 24, 2016.

Stream buffer variances cannot be reviewed concurrently with rezonings, because only the BZA has the authority to review stream buffer variances. The stream buffer is reviewed first because of the impact it has on the site plan that goes before Planning Commission and Mayor and City Council.

The subject property is an undeveloped, wooded site of large growth trees. The majority of the property is below road grade, and there is a stream that flows throughout the northern portion of the property that has stream buffers that fill approximately half of the northern portion of the property. These factors make the site very challenging to develop.

ADJACENT ZONING AND LAND USES

Adjacent properties to the north are zoned C-1 (Community Business) Conditional pursuant to Fulton County zoning case Z-86-281 and O-I (Office-Institutional) Conditional pursuant to Fulton County zoning case Z-86-100. Properties to the east are zoned CUP (Community Unit Plan) Conditional pursuant to Fulton County zoning case Z-05-118, and are in the Autry Township subdivision. The properties to the south are C-1 (Community Business) Conditional pursuant to Fulton County zoning case Z-02-064. The properties to the west are zoned CUP (Community Unit Plan) Conditional pursuant to Fulton County zoning case Z-78-020.

APPLICABLE CODE REQUIREMENTS

City Code; Chapter 109: Natural Resources & Environmental Protection; Article V: Stream Buffer Protection; Section 109-118: Land Development Requirements.

- (i) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wretched vegetation.
- (ii) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

VARIANCE REQUIREMENTS

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. These considerations include:

- (i) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.
- (ii) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

ADDITIONAL STREAM BUFFER CONSIDERATIONS

Stream buffers are the areas of land immediately adjacent to the banks of state waters which facilitate the protection of water quality and aquatic habitat. Buffers also preserve green space, improve aesthetics, reduce stormwater runoff velocities, help control flooding, and keep stream water cool by providing shade. These buffers must remain undisturbed in their natural state during and after construction, however variances can be obtained that allow for encroachment under certain conditions. Stream buffers are regulated on both the state and local levels and each agency has different rules regarding buffer widths. The Georgia Environmental Protection Division (EPD) requires 25 foot buffers on both sides of a stream, measured from the point of wrested vegetation which is usually located at the tops of the banks. The City of Johns Creek requires an undisturbed buffer of 50 feet with an additional 25 feet where all impervious surfaces are prohibited. Variance applications may be granted on a case by case basis provided the applicant submit information showing the location of the stream, the extent of encroachment, and documentation of the unusual hardship should the buffer be maintained. These variance applications must also provide mitigation measures to offset the impacts of land development or disturbance on the proposed property. Although allowed by ordinance, granting of stream buffer variances should be kept to a practicable minimum in order to preserve water quality and minimize flood risks from future, upstream development. The location and extent of buffer encroachment, long term water quality impacts, and potential, less intrusive alternate designs are all factors to be considered in determining whether to issue a variance. Stream Buffer Variances granted by the City of Johns Creek are subject to annual audits by the Metropolitan North Georgia Water Planning District and the EPD. The City must ensure that consistency and thorough examination to long term impacts are considered in order to justify granting variances.

STAFF RECOMMENDATION

The applicant intends to construct a portion of a parking lot and a retaining wall for a mixed-use commercial development for C-1 uses. Twelve parking spaces and the retaining wall will encroach 2,347-square feet located into the 75-foot no impervious surface setback.

Although the subject property was never platted, as it remains undisturbed, there is evidence that it would have been platted with a 25-foot or 35-foot tributary buffer, from the Fulton County Board of Commissioners meeting on February 18, 1998 that established an ordinance for stream buffers of these dimensions. The stream flows through the northern portion of the property, causing approximately half of the property to be located in a stream buffer, now that the City of Johns Creek requires 75-feet of stream buffers. When the site was likely to have had a 25-foot or 35-foot buffer, only a third of the site would have been unable to develop.

In addition to the difference in the required stream buffer dimensions, the majority of the site is located below road grade and maintains a very steep slope making for an even larger area of unusable land on the property.

The Department would note that the applicant has submitted a replanting plan to mitigate the proposed 2,347-square-foot intrusion into the stream buffer with an assortment of large trees, small trees, shrubs, and groundcover. It appears that this plan meets the stream buffer mitigation that is required.

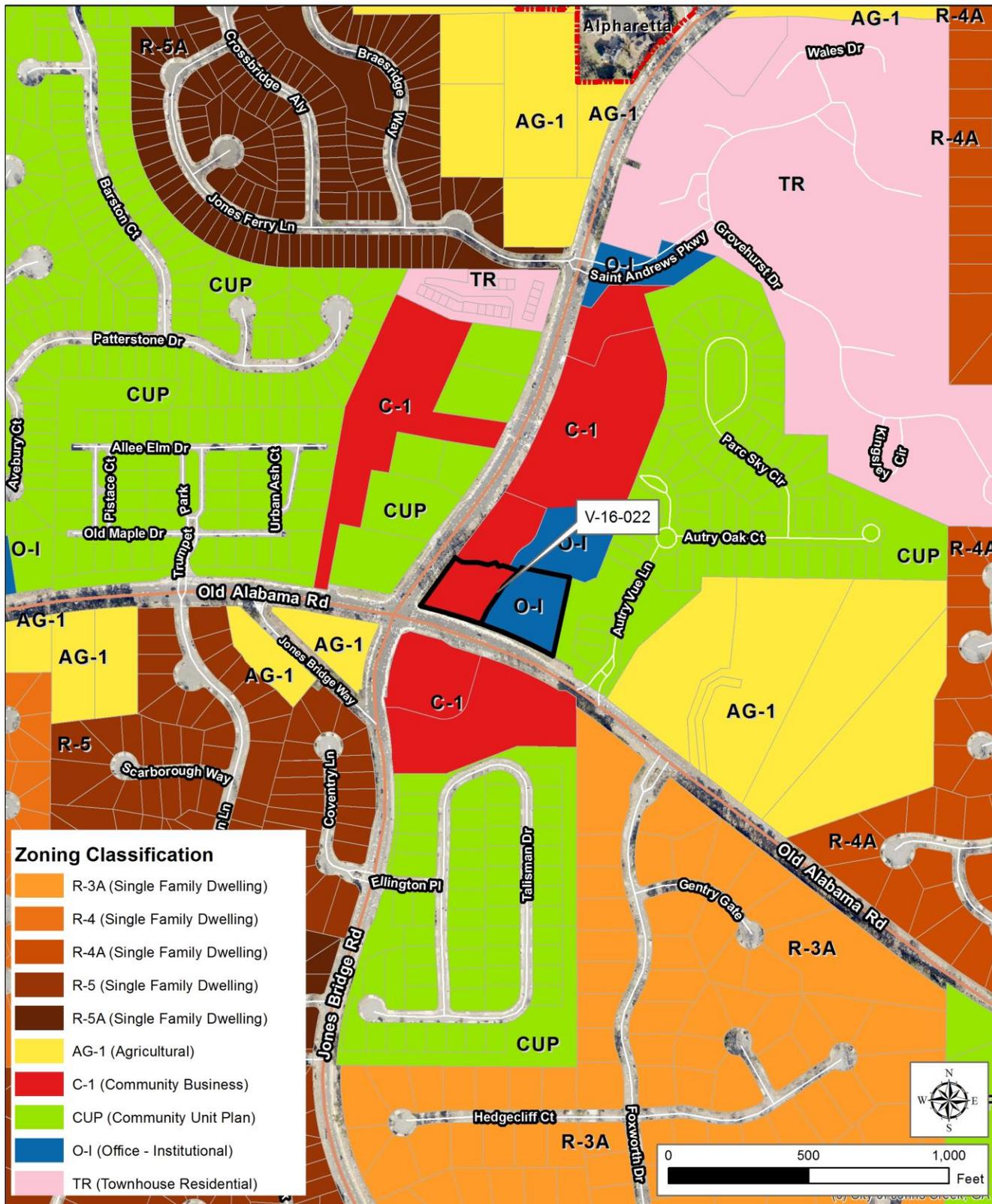
Had the subject property been platted, the applicant would have had the ability to implement the proposed improvement on the lot without a variance. Because of this, the topography issues on the subject property, and the applicant's agreement to implement an adequate mitigation plan; the Department of Community and Development recommends **APPROVAL WITH CONDITIONS** of this request.

RECOMMENDED CONDITIONS

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of this request, subject to the following conditions of approval:

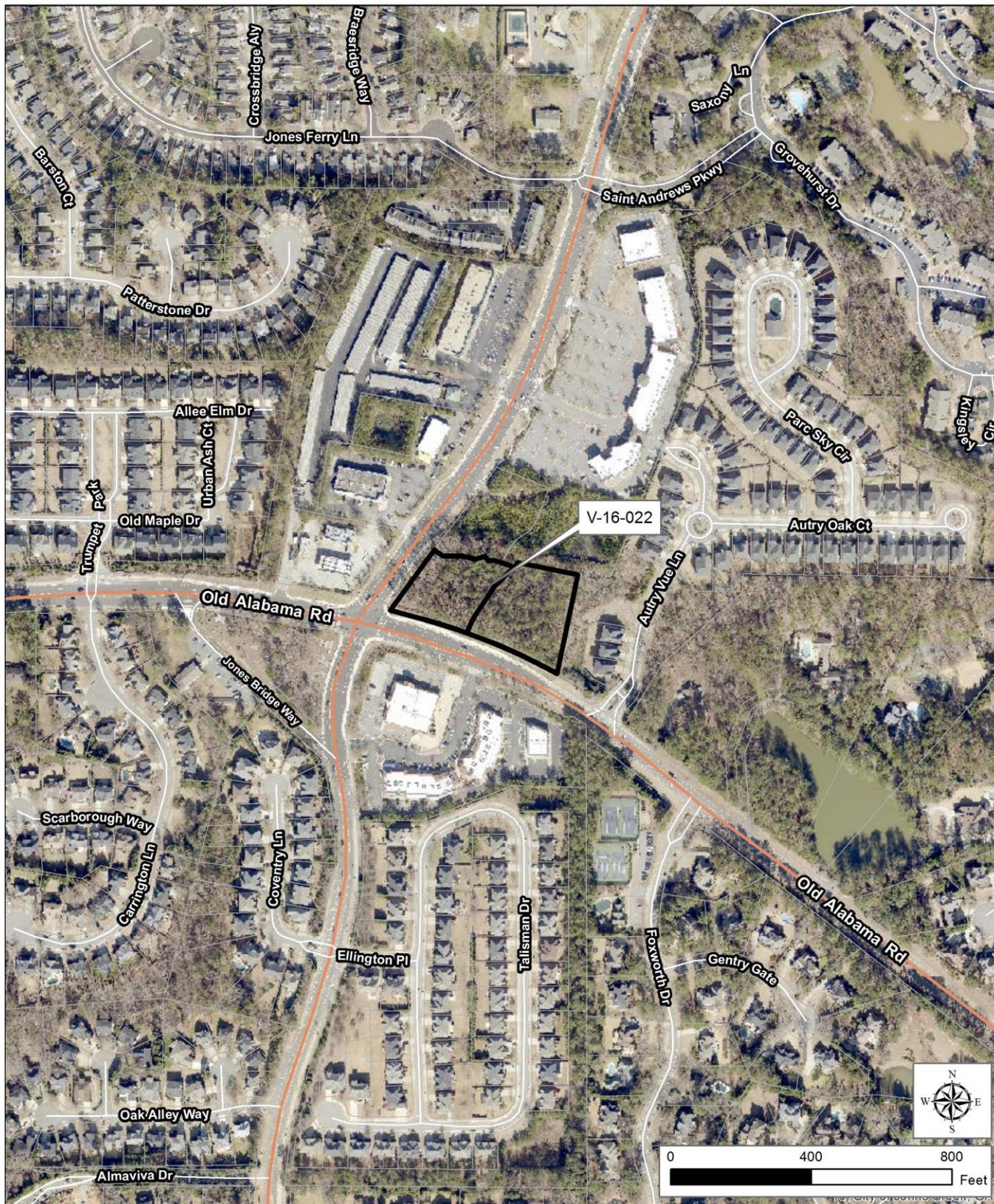
- 1) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property to offset any adverse impact associated with the additional disturbance/impervious surface closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated August 31, 2016 or an alternative plan approved by the City Arborist.
- 2) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of construction.
- 3) The construction of the parking lot and retaining wall shall be limited to 2,347 square feet in the 75' no impervious surface setback, as shown on the site plan received on September 8, 2016, with minor modifications to comply with the site plan for RZ-16-001 (if approved by Mayor and Council).

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Community Development

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